**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928**

**WP(C).No. 25633 of 2006(B)**

---

**PETITIONER:**

---

**THE MANAGER, K.R.G.P.M.HIGHER SECONDARY SCHOOL, ODANAVATTAM, KOTTARAKKARA, KOLLAM DISTRICT.**

**BY ADV. SRI.GEORGE POONTHOTTAM**
**SMT.PRINCY XAVIER**

**RESPONDENTS:**

---

1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **SMT.MARY JOHN, HSST, K.R.G.P.M.HIGHER SECONDARY SCHOOL, ODANAVATTAM, KOTTARAKKARA, KOLLAM DISTRICT.**

3. **THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDING, SANTHI NAGAR, THIRUVANANTHAPURAM.**

**ADDL.4TH RESPONDENT IMPLEADED.**

4. **SREELEKHA H., PRINCIPAL, K.R.G.P.M HIGHER SECONDARY SCHOOL, ODANAVATTAM, KOTTARAKKARA, KOLLAM DISTRICT.**

**ADDL.4TH RESPONDENT IMPLEADED AS PER ORDER DT.11.10.06 IN IA. 14014/06.**

**BY ADV. SRI.M.V.THAMBAN**
**SRI.HARUN-AL-RASHID**
**GOVERNMENT PLEADER SRI.T.T.MUHAMMED**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/03/2007, ALONG WITH WPC NO. 27454 OF 2006 WPC NO. 3183 OF 2007 WPC NO. 3687 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C) NO.25633/2006**

## APPENDIX

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE PROCEEDINGS NO.ACD.B3/12035/HSE/04 DT.1.8.04 ISSUED BY THE 3RD RESPONDENT.**

**EXT.P2:- COPY OF THE JUDGMENT IN WP(C) NO.29389/04 DT.10.1.05.**

**EXT.P3:- COPY OF THE NOTIFICATION NO.1/05 DT.18.1.05 ISSUED BY THE PETITIONER.**

**EXT.P4:- COPY OF THE PROCEEDINGS NO.B3-19268/HSE/04 DT. 1.2.05 ISSUED BY THE 3RD RESPONDENT.**

**EXT.P5:- COPY OF THE NOTIFICATION NO.66/05 DT.22.12.05 ISSUED BY THE PETITIONER.**

**EXT.P6:- COPY OF THE REPRESENTATION FILED BY THE 2ND RESPONDENT BEFORE THE SECRETARY DEPARTMENT OF GENERAL EDUCATION, THIRUVANANTHAPURAM.**

**EXT.P7:- COPY OF THE WRITTEN SUBMISSION GIVEN ON BEHALF OF THE PETITIONER.**

**EXT.P8:- COPY OF THE GO(Rt) NP.3443/06/G.EDN. DT.7.8.06.**

**EXT.P9:- COPY OF THE ORDER NO.L1-1921/1921/06 DT.5.5.06.**

**EXT.P10:- COPY OF THE CIRCULAR NO.23184/T1/06 G.EDN. DT.20.5.06 ISSUED BY THE 1ST RESPONDENT.**

**/TRUE COPY/**

**tss**

**K.M.JOSEPH, J.**

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

WP.(C) Nos. 25633 & 27454/06 & 3183 & 3687/07

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Dated this the 5th day of March, 2007

**JUDGMENT**

The writ petitions being connected, they are disposed of by a common judgment.

2. Petitioner in W.P.(C) 25633 of 2006 is the Manager of a Higher Secondary School. He has filed W.P.(C) 3183 of 2007 also. The case of the Manager in W.P.(C) 25633 of 2006 essentially is as follows:

The Manager resorted to selection for appointment to the post of Principal by Ext.P3 notification. Though notice was acknowledged by the second respondent, who is referred to hereinafter as Smt. Mary John, she did not appear. Accordingly the senior most hand Smt. Sreelekha was appointed as in charge. Thereafter another selection notification was issued as per Ext.P5. Though notice was acknowledged by Smt. Mary John, she did not submit application within the stipulated time. Candidates were interviewed and Selection Committee recommended the selection of Smt. Sreelekha. Smt. Mary

John however complained to the first respondent. First respondent is the State of Kerala. The first respondent lacks jurisdiction in considering such a complaint, that too before a decision is taken by the Director on the question of approval. Further the petitioner has a case that when the notice was received and a detailed reply was given as Ext.P7, that too was also not considered. The Manager challenges Ext.P8 order in W.P.(C) 25633 of 2006. By Ext.P8 the Government has directed that the selection made on 9.1.2006 is infructuous and it is cancelled. The Manager was directed to move for a selection process strictly as per Rules. The very same order Ext.P8 is challenged in W.P.(C) 27454 of 2006 by Smt. Sreelekha.H. It is pending these two writ petitions that a development took place, which apparently led to the filing of W.P.(C) 3183 of 2007 challenging Ext.P13. It is complained, when the writ petition challenging Ext.P8 order is pending Ext.P13 order is passed again by the Government apparently on the basis of a review petition. Apparently Smt. Mary John filed a review petition claiming that she should be appointed and Government accepted that claim and appointment made by the Manager to the post of Principal is

set aside and he was directed to consider the claim of Smt. Mary John properly to the post at the earliest. The review petition was considered without notice to the petitioner and that the matter was stayed by this court, it is contended.

3. The prayer in W.P.(C) 3687 of 2007, which is filed by Smt. Mary John, is for a declaration that petitioner is the senior most qualified teacher to be promoted as Principal as on 12.11.2001 when the rules were notified and on 6.1.2006 and for a further direction to appoint her as Principal with all consequential benefits and to implement Exts.P4 and P6 already referred to above.

4. Heard counsel for the Manager, Smt. Sreelekha, Smt. Mary John and the learned Government Pleader. I would think that Ext.P8 which is already referred and Ext.P7 which is the corresponding exhibit in the writ petition filed by Smt. Sreelekha deserves to be quashed on the short ground that Government had no jurisdiction to consider the question relating to appointment of Principal. Under Rule 5 of Chapter XXXII of KER power is vested with the Director in the matter of approval of appointment made in aided Higher Secondary Schools. It

is not open to the Government to arrogate that power to itself in view of the clear provisions of Rule 5.

5. Accordingly on that short ground Ext.P8 in W.P.(C) 25633 of 2006 and Ext.P7 in W.P.(C) 27454 of 2006 are quashed. Equally Ext.P13, which is purportedly passed on the review petition of Smt. Mary John by the Government appears to be vulnerable on more grounds than one. As already found the Government did not have power to deal with the matter. It is mystifying as to what is the source of the Government's power to review such an order where the Government does not enjoy the power to even pass the original order. Ext.P13 in W.P.(C) 3183 of 2007 is unsustainable and accordingly Ext.P13 is quashed. But that would not be the end of the matter and the entire questions will have to be dealt with by the Director who is the statutory authority in the matter.

Accordingly the writ petitions are disposed of directing the Director of Higher Secondary Education to consider the question relating to approval of appointment of Smt. Sreelekha to the post of Principal with notice to the Manager, Smt. Sreelekha, Smt. Mary John

and any other affected party and final orders in accordance with law will be passed within a period of two months from the date of receipt of a copy of this judgment.

(K.M. JOSEPH, JUDGE)

sb

K.M.JOSEPH, JJ.

- - - - - - - - -- - - - - - - - - - - - - - - - - - - - - - - - - - - -

W.A. No. OF

- - - - - - - - - - - - - - - - - - - - - - -- - - - - - - - - - - - - - -

**JUDGMENT**

Dated this the day of February, 2006.